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AO 106 (Rev. 07/87) Affidavit for Search Warrant

ORDERED SEALED BY COURT

Unsealed 07-07-08

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

08 JUN 17 AM 11:40

In the Matter of the Search of

(Name, address, or brief description of person, property or premises to be searched)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

The Premises of Miguel TORREZ
577 Snapdragon Way
Imperial, California 92251

CASE NUMBER: '08 MJ 1868

I, Matthew Beals, being duty sworn depose and say: I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives and have reason to believe

that on the property or premises known as (name, description and/or location)

SEE ATTACHMENT A

In the Southern District of California there is now concealed a certain person or property, namely (describe the person or property to be seized

SEE ATTACHMENT B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

property which constitutes evidence of the commission of a criminal offense concerning a violation of Title 18 United States Code, Section 922 (g)(9) and Title 18 United States Code, Sections 922(a)(6)

The facts to support a finding of Probable Cause are as follows:

SEE ATTACHMENT C

Continued on the attached sheets and made a part hereof.

[signature]
Signature of Affiant

Sworn to before me, and subscribed in my presence

6-17-08 at San Diego CA

Date City and State

[signature]

Nita L. Stormes
U.S. Magistrate Judge

Signature of Judicial Officer

ATTACHMENT A

DESCRIPTIONS OF LOCATION TO BE SEARCHED

The Premises

The Premises of Miguel TORREZ
Address: 577 Snapdragon Way, including all outbuildings and appurtenances thereto, in the City of Imperial, California 92251, County of Imperial, within the Southern District of California.

The Premises' Physical Description

The residence at 577 Snapdragon Way is a single-family dwelling that is tan in color with tile shingles. The numerals 577 appear on the curb in front of the residence, which is near the intersection of Bougainvillea Trail and Snapdragon Way.

Vehicles

Any vehicle and/or vessel located on the premises described above.

ATTACHMENT B
DESCRIPTION OF EVIDENCE TO BE SEIZED

FIREARMS

Any and all firearms or ammunition, as well as other items pertaining to the possession of firearms, which include parts and accessories.

RECORDS AND DOCUMENTS

Any and all records, documents or photographs that pertain to firearms, transactions for firearms, finances or establish the persons who have dominion and control over the property searched.

COMPUTERS

In searching for data capable of being read, stored or interpreted by a computer, law enforcement personnel executing this search warrant will employ the procedure detailed below.

The computer equipment and storage devices will be seized and transported to an appropriate law enforcement laboratory for review. The computer equipment and storage devices will be reviewed by appropriately trained personnel in order to extract and seize any data that falls within the list of items to be seized set forth herein.

In searching the data, the computer personnel may examine all of the data contained in the computer equipment and storage devices to view their precise contents and determine whether the data falls within the items to be seized as set forth herein. In addition, the computer personnel may search for and attempt to recover "deleted," "hidden" or encrypted data to determine whether the data falls within the list of items to be seized as set forth herein.

If the computer personnel determine that the data does not fall within any of the items to be seized pursuant to this warrant or is not otherwise legally seized, the government will return these items within a reasonable period of time not to exceed 60 days from the date of seizure unless further authorization is obtained from the Court.

In order to search for data that is capable of being read or interpreted by a computer, law enforcement personnel will need to seize and search the following items, subject to the procedures set forth above:

- Any computer equipment and storage device capable of being used to commit, further or store evidence of the offense listed above;
- Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;

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- Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;
- Any documentation, operating logs and reference manuals regarding the operation of the computer equipment, storage devices or software.
- Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices or data to be searched.
- Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data.
- Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.

And other instrumentalities and evidence of violations of Title 18 U.S.C. § 922(g)(9) – possession of firearms by a person convicted of domestic violence and Title 18 U.S.C. § 922(a)(6) – false statements which were intended to deceive a Federal Firearms Licensee (FFL).

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ATTACHMENT C
AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

I, Matthew W. Beals, being duly sworn, depose and state that:

1. I am a Special Agent (SA) employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), United States Department of Justice, and have been so employed for approximately six years.

2. I am currently assigned to the San Diego, California Field Office. I am a graduate of the Federal Law Enforcement Training Center and the ATF National Academy; as a result of my training and experience as an ATF Agent, I am familiar with federal and state criminal laws. My primary duties have been the enforcement of federal firearm, arson and explosive laws. I have participated in numerous investigations of possession of firearms by prohibited persons and the possession of illegal firearms. I have participated in investigations that involved interstate and international firearm trafficking. I have also participated in the searches of numerous residences and businesses involving federal and state firearm violations.

3. This affidavit is in support of a search warrant for the residence of Miguel TORREZ, located at 577 Snapdragon Way, Imperial, California 92251, for firearms, ammunition, firearm records, papers and documents which evidence the sale, transfer or possession of firearms by TORREZ, ~~as well as any narcotics~~. These records and firearms are evidence of violations of Title 18 U.S.C. § 922(g)(9) – possession of firearms by a person convicted of domestic violence, Title 18 U.S.C. § 922(a)(6) – false statements which were intended to deceive a Federal Firearms Licensee (FFL).

4. According to Imperial Police Department (IPD) records, on June 1, 2007, at approximately 7:44 AM, Angel Torres contacted IPD and reported a domestic dispute between his parents, identified as Rosa Isela Ayala (female, Hispanic, born on April 5, 1970) and Miguel TORRES (male, Hispanic, born on June 17, 1965). According to Angel Torres, his parents were engaged in a verbal argument at their residence, located at 577 Snapdragon Way, Imperial, California 92251; IPD officials reported a history of domestic violence contacts at said residence. Angel Torres also reported that his father had firearms in their garage.

5. IPD Officers A. Rubio and R. Martinez responded to the aforementioned address and met with Angel Torres, Ayala and Miguel TORRES. Ayala told officers that she and TORRES had been in an argument over their trucking company and finances. Meanwhile, Angel Torres retrieved three firearms, to wit: one 7.62 caliber assault weapon, one .44 caliber revolver and one .357 caliber revolver and gave them to Officer Rubio.

6. Officer Rubio subsequently contacted TORRES, who was in an upstairs bedroom, away from his wife and son at the time. TORRES told Officer Rubio that he and his wife were in an argument before he and Officer Martinez arrived. Officer Rubio questioned TORRES as to the firearms found in his garage; TORRES claimed that he was unaware of said firearms. Meanwhile, Officer Martinez interviewed Ayala, who had been crying and was physically shaking. According to Officer Martinez, Ayala indicated that TORRES had threatened her with firearms in the past. Ayala refused to answer any other questions. Officers Rubio and Martinez stayed at the residence until TORRES got dressed and left in order to "cool things off."

7. On April 22, 2008, I queried TORRES by name and date of birth in the National Crime Information Center (NCIC); the query revealed that he had federal (FBI# 336894FA2) and state (CII# CA08262577) criminal history records.

8. According to the NCIC record, TORRES' true identity is Miguel TORREZ, born on July 1, 1963; however he has used the following aliases:

   a. Rafael ESPINOZA AGUIRRE
   b. Miguel TORRES Zarate
   c. Rafael Z AGUIRRE
   d. Miguel TORRES Zarate
   e. Miguel ZARATE
   f. Miguel ZARATE Torres
   g. Miguel ZARATE Torrez

9. In addition, the NCIC record identified the following dates of birth that were used by TORREZ:

   a. March 1, 1956
   b. June 17, 1965
   c. June 27, 1965

10. Finally, the NCIC report indicated that TORREZ was arrested on October 8, 1992 by the United States Border Patrol in El Centro, California for transporting illegal aliens. However, on November 10, 1992, the United States Attorney's Office declined to prosecute TORREZ for the aforementioned offense.

11. According to a California Identification Index (CII) record, TORRES' true identity is Miguel TORREZ, born on July 1, 1963. The record also indicated that TORREZ used all of the previously-mentioned aliases in his NCIC record, in addition to at least two more.

12. According to the CII record, on July 24, 2002, TORREZ' was arrested by IPD for violating California Penal Code 273.5 – INFLICT CORPORAL INJURY ON SPOUSE.

13. According to police records, on July 24, 2002, Ayala contacted IPD to report that on July 23, 2002, at approximately 11:00 PM, TORREZ arrived at home from work and was drunk. Ayala stated that she questioned TORREZ' as to his whereabouts when he became enraged and began to hit her in the face with his hands; Ayala stated that she could not recall whether or not TORREZ' fists were open or closed. Ayala also stated that the beating occurred in front of three of their children (ages thirteen, six and five). Ayala told IPD officials that she ran away from TORREZ and locked herself in their bedroom. However, Ayala stated that TORREZ immediately broke the door in half and then choked and kicked her repeatedly. Ayala stated that TORREZ eventually stopped beating her and fell asleep in their bedroom; Ayala stated that she slept in her daughter's room. Ayala told IPD Officer Espinoza that she waited to call IPD until July 24 because she didn't feel that it was safe to do so until TORREZ left for work. IPD Officer Espinoza noted that Ayala had several bruises, scratches and marks on multiple parts of her body.

14. According to the CII record, on November 5, 2002, TORREZ pled guilty to violating CA PC 273.5, a misdemeanor, in the Superior Court, County of Imperial.

15. In addition, the CII record indicated that TORREZ had at least two California Driver's Licenses (CDL) issued to him by California Department of Motor Vehicles (DMV), to wit: CDL: N8350983 – issued to Raphael Espinoza Aguirre, born on March 1, 1956 and CDL: B3080777 – issued to Miguel TORRES-Zarate, born on June 17, 1965. I compared the photographs on the aforementioned driver's licenses and concluded that they were the same individual.

16. Continuing on April 22, 2008, I conducted query of California's Automated Firearm System (AFS); AFS identifies handguns and assault weapons purchased by residents of California. However, AFS is not an all-inclusive firearm registration. The query revealed that on November 8, 1989, Michael TORRES Zarate, born on June 17, 1965, purchased two firearms, to wit: one Colt, model King Cobra, .357 caliber, revolver, serial number CK9381 and one Auto-Ordnance, model A Government, .38 caliber, pistol, serial number A0C8585. The report did not include any other firearms, including the 7.62 caliber assault weapon that was recovered from his residence on June 1, 2007.

17. Based on my training and experience, consultation with other agents from ATF, and all of the facts and opinions set forth in this affidavit, I know:

a) It is common for individuals who illegally acquire, possess and sell firearms to keep firearms and documents related to the acquisition and disposition of firearms at their residence, businesses and in their vehicles for an indefinite period of time.

b) It is common for individuals who possess firearms (whether lawfully or unlawfully) to possess items relating to those firearms, which includes ammunition, magazines, holsters, spare parts, cleaning equipment, periodicals, photographs of firearms and receipts for the purchase and repair of those items in their residences, businesses and vehicles.

c) It is common for individuals that posses firearms or have possessed firearms to maintain and store ammunition in their residences, businesses and vehicles, even if they no longer possess firearms.

d) It is common for residents of California to not have all of the firearms they possess registered to them in AFS.

e) It is also common for individuals involved in the illegal possession of firearms to store those items at places other than their residences, such as storage lockers or sheds. However, they often maintain receipts or other documentation related to those storage locations in their residences, businesses, and vehicles.

f) It is common for residents of California to purchase firearms in California and Arizona and transport, deliver and sell them to other individuals in California or Mexico.

18. Furthermore, individuals involved in the illegal possession and transfer or sale of firearms, whether registered or unregistered, do not want to be identified by law enforcement. Therefore, these

individuals go through surreptitious means to acquire, maintain, and transfer or sell firearms without complying with state and federal laws including, but not limited to, using false names, false addresses and utilizing straw-purchasers. By doing this, these individuals attempt to thwart efforts to trace firearms, making it difficult for law enforcement to identify the last known purchaser of a firearm recovered from a crime scene.

19. Therefore, based on my training, experience, and the aforementioned facts, which I believe to be true, I have probable cause to believe that the above described property or a portion thereof will be at the described premises when the warrant is served and that such items would constitute evidence of possession of a firearm by an individual convicted of domestic violence. With the above information, I formally request the issuance of a search warrant for the aforementioned premises.

20. The statements made in this affidavit are made based on the personal observations and investigation conducted by your affiant, and information communicated or reported to your affiant during the investigation by other participants in the investigation, as the content of this affidavit indicates.

Further affiant sayeth not.

I declare under penalty and perjury that the foregoing is true and correct to the best of my knowledge.

MATTHEW W. BEALS
Special Agent,
Bureau of Alcohol, Tobacco, Firearms and Explosives

Sworn to before me and subscribed in my presence, in San Diego, California, on June 17, 2008.

Nita L. Stormes
United States Magistrate Judge